

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/627,258	§	Examiner: Le, Uyen T.
Filed: July 25, 2003	§	Group/Art Unit: 2163
Inventor(s):	§	Atty. Dkt. No: 5760-12600/VRTS
Paul L. Popelka and Manish M.	§	0289
Agarwal	§	
	§	
	§	
Title: Network File System	§	
Record Lock Recovery in a	§	
Highly Available	§	
Environment	§	
	§	
	§	
	§	

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF OF
November 26, 2007**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is submitted in response to the Notification of Non-Compliant Appeal Brief of November 27, 2007. The Notification asserts that dependent claim 3, argued separately from independent claim 1, has not been mapped to the specification by page and line number and to the drawings by reference characters pursuant to 37 C.F.R. § 47.37(c)(1)(v). Appellant respectfully submits that, while claim 3 is indeed argued separately from independent claim 1, the above-cited section of 37 C.F.R. does NOT require that claim 3 be mapped to the specification as set forth in the Notification. The provisions of 37 C.F.R. § 47.37(c)(1)(v) apply ONLY to those dependent claims that are set forth in "means plus function" or "step plus function" form, as permitted by 35 U.S.C. § 112, paragraph 6. Appellant submits that claim 3 (and claim 2, which is also argued separately from claim 1) are NOT in "means plus function" or "step plus function" form, and thus the provisions of 37 C.F.R. § 47.37(c)(1)(v) do not apply to these claims.

37 C.F.R. § 47.37(c)(1)(v) states: "For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters." Clearly, then, this rule only applies to those dependent claims that are set forth in means plus function or step plus function format. Appellant submits that neither claim 2 nor claim 3 is in this form. Nothing in either claim is expressed in "means for [function]" or "step for [function]", which generally triggers the provisions of section 112, paragraph 6. Accordingly, there is a presumption that the claims are not subject to section 112, paragraph 6. Nothing in these claims over comes that presumption.

Accordingly, Appellant submits that the Notification is erroneous. Appellant respectfully requests that the Notification be rescinded, and that the Appeal be permitted to proceed. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-12600/LJM.

Respectfully submitted,

/Lawrence J. Merkel/
Lawrence J. Merkel, Reg. #41,191
AGENT FOR APPLICANT(S)

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Date: December 13, 2007